

These minutes are subject to formal approval by the Wyoming Zoning Board of Appeals at their regular meeting on October 3, 2016.

MINUTES OF THE WYOMING BOARD OF ZONING APPEALS
HELD AT WYOMING CITY HALL

September 19, 2016

The meeting was called to order at 1:30 P.M. by Chairman VanderSluis.

Members present: Beduhn Burrill Buist Lomonaco
 Palmer VandenBerg VanderSluis

Member absent: Postema

Other official present: Tim Cochran, City Planner

A motion was made by Buist, and seconded by Palmer to approve the minutes of the September 19, 2016 Board of Zoning Appeals meeting with the correction to page two from "Vice Chairman VanderSluis" to "Vice Chairman Palmer".

Motion carried: 6 Yeas 0 Nays

PUBLIC HEARING:

Appeal #V160027 P.P. #41-17-16-479-002
Herring, Jeffrey
3416 Wilcox Ave. S.W.
Zoned R-2

The application requesting a use variance from the City of Wyoming Zoning Code was read by Secretary Lomonaco as follows:

Zoning Code Section 90-406A R-2 Residential District Principal Permitted Uses identifies the allowable land uses on this property. The petitioner desires to operate a retail firearms business from the residence. Retail sales are not a permitted use in the district. The requested use variance is to authorize the retail firearms business to operate from the residence.

Secretary Lomonaco read the applicant's submittal in support of his variance request. Secretary Lomonaco also read two communications in opposition to the variance request, an e-mail from Genevieve Colter, 3458 Wilcox Ave. S.W., and a letter from Becky Colter, 3458 Wilcox Ave. S.W.

Chairman VanderSluis opened the public hearing.

Jeffrey Herring, 3416 Wilcox, explained he was applying for a Federal Fire Arm License. As a licensed dealer he would be required to do background checks on everyone who wanted to buy a fire arm. He would only have limited sales, and that should not affect traffic.

Al Boverhof, 3405 Wilcox has been a resident on the street for 55 years. The neighborhood is not a good place for a business. The applicant already has three vehicles, sometime four when a friend visits. It is already hard to get down the street with the parked cars. Personally he thought Mr. Herring was a good neighbor but Wilcox is not the place for fire arms.

Katie Nelund, 3406 Wilcox has lived on the street for a year. She has a small son. She also has a fire arm, so it is not that she is scared of fire arms, but she does not see a need for fire arm sales on the street. She and her husband also have three cars. There are already a lot of cars on the street. She does not know what the potential customer sales would be. She opposed the variance request.

There being no further remarks, Chairman VanderSluis closed the public hearing.

A motion was made by Beduhn and seconded by Palmer that the request for a variance in application no. V160027 be granted, accepting staff's Finding of Facts.

Cochran noted the Board has considered similar variance requests in the past. The City has pretty fairly strict standards for home occupation. There are a lot of home based businesses in the City that the City does not even know are there. The City has issues when neighbors have complaints about equipment or traffic problems. Typically those types of businesses do not have business licenses and are addressed by the City. The Federal Government is involved in the regulation of the fire arm sales. The Federal Government will not issue a license unless approved for zoning through the municipality. Each house according to national standards is assumed to have an average of ten trips per day. This business anticipation is not irregular. A house business would be allowed a very minimal house sign if the owner chose to have one. The Board has granted similar requests in the past. Due to the unique business type, a variance was necessary as the sale product is not manufactured at the home however staff supported the variance request. Cochran offered the following proposed Finding of Facts in support of the variance request.

1. That the condition, location, or situation of the specific piece of property or of the intended use of the property is unique to the property in the zoning district in which it is located because the petitioner proposes a modified home occupation (see attached definition) business that is unique. The firearm sales occur primarily through gun shows and the internet, with limited customer activity actually occurring at the home. The home based sales use is regulated through licensure and inspection by the Federal Government, but they do require approval by local jurisdictions. Through the years, the Board of Zoning Appeals has considered, and approved, similar requests. Staff cannot authorize the use, as the product sold is not produced on the property.
2. That the building, structure or land cannot be reasonably used in a manner consistent with the uses allowed in the zoning district in which it is located because the City allows for a wide range of home based businesses, including some that allows for limited customer traffic such as home beauty salons and craft instruction. While the primary use

- of the property will remain as a residence, the limited retail sales use is consistent with other home based businesses.
3. That the use variance will not alter the essential character of the neighborhood nor the intent of the City Master Plan, nor be of detriment to adjacent properties because the use would not change the essential character of the neighborhood, nor the intent of the Master Plan, nor be of detriment to adjacent properties. Limited customer and delivery traffic is anticipated with the use.
 4. That the requested use is not of so general or recurring a nature as to make reasonably practical the formulation of a general regulation or adding it to the permitted uses in the zoning district in which it is located or to permitted uses in other more appropriate zoning districts because the proposed home based firearm sales business is unique, with proposals to the City occurring only every few years. The proposed home based firearm sales use is not general or recurring.
 5. That the variance will not impair the intent and purpose of this Ordinance because the authorizing of the variance will permit a very low impact commercial use of the property. The proposed use will not impair the intent and purpose of the Ordinance.
 6. That the immediate unnecessary hardship causing the need for the variance request was not created by the applicant because the Federal Government requires local authorization for home based firearm sales.

Chairman VanderSluis asked if a plat restriction would affect the City's consideration of a variance request.

Cochran has never dealt with a request where a plat restriction would affect it. Typically the City does not get involved with plat restrictions as they do not apply to the City Code of Ordinance.

Beduhn asked if the applicant intended to sell hand and long guns.

Mr. Herring answered he would primarily sell hand guns.

Beduhn then asked how the applicant would solicit business, and what type of back ground check he would be required to do.

Mr. Herring answered he was planning on acquiring customers from shows, and possibly the internet. He knew that with his Federal Fire Arm license, he was required to do a specific background check.

Palmer noted the applicant's support document stated he would only have ten guns, but he wondered how he would build his business. Would his business be more like a catalog sale business?

Mr. Herring planned on only selling ten guns a month. He would like to grow his business and move to a store front at some time.

Lomonaco thought selling only ten guns a month would not be enough to warrant opening a store front. His traffic would have to increase substantially to warrant opening a store front in a year. She had concerns regarding safety and traffic.

Beduhn asked if the variance could be granted with a time limit stipulation.

Cochran said that in the past the Board has put limitations on variances however staff has concerns with granting time limitations. Technically, if a variance is granted for any length of time, it would be difficult to deny the same variance at any other time. Usually if the variance causes concerns the owner is contacted and the concerns are addressed. He encouraged the Board members not to put time limits on approvals of variances.

Chairman VanderSluis thought that the Federal Fire Arms licensure guidelines would also put restrictions on the sales. If the guidelines were violated, the licensee could have the license revoked.

VandenBerg wondered how the City would receive information on revoked licenses.

Cochran remarked that while he has been notified of new requests for fire arm licenses, he has never been contacted for a “ceased” license.

Buist did not have a concern necessarily with the gun sales but with the retail sale use and the possible volume, especially with the lack of support from the neighbors.

VandenBerg asked if the applicant “built” a gun on site, would that be considered manufactured.

Cochran did not have a ready answer, but as the gun would potentially made of pre-built components, he would not consider it to be manufactured on site.

Mr. Herring said he would need a different license in order do what VandenBerg suggested.

Palmer asked if the City would have any recourse if there was an issue with traffic.

Cochran said the City would have a conversation with the owner to solve the situation.

Lomonaco noted that the City would probably not be able to close the business.

Motion failed: 1 Yeas 5 Nays (VandenBerg, VanderSluis, Lomonaco, Palmer, Buist)

The general consensus of the Board was there were the retail sales, the increased traffic and potential safety concerns. Also, the Board felt the owner did not meet all the conditions of the State mandatory finding of facts, as the applicant currently was able to use the property in a manner consistent with the uses allowed in the zoning district in which it is located and if

there was any immediate unnecessary hardship causing the need for the variance, it was created by the applicant.

There were no public comments at the meeting.

The new business items were discussed by Cochran and the Board members.

Canda Lomonaco
Secretary

CL:cb